

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

**MIGUEL VACA,
APPELLANT
vs.**

**STATE OF MISSOURI,
RESPONDENT**

DOCKET NUMBER WD69004

DATE: OCTOBER 13, 2009

Appeal from:

Platte County Circuit Court
The Honorable Owens L. Hull, Jr., Judge

Appellate Judges:

Court En Banc: Thomas H. Newton, Chief Judge, James E. Smart, Jr., Judge, Joseph M. Ellis, Judge, Victor C. Howard, Judge, Lisa White Hardwick, Judge, James E. Welsh, Judge, Alok Ahuja, Judge, Mark D. Pfeiffer, Judge, and Harold L. Lowenstein, Sr. Judge

Attorneys:

Susan L. Hogan, for Appellant

Daniel N. McPherson, for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

MIGUEL VACA,

APPELLANT

**v.
STATE OF MISSOURI,**

RESPONDENT

WD69004

Platte County, Missouri

Before Court En Banc: Thomas H. Newton, Chief Judge, James E. Smart, Jr., Judge, Joseph M. Ellis, Judge, Victor C. Howard, Judge, Lisa White Hardwick, Judge, James E. Welsh, Judge, Alok Ahuja, Judge, Mark D. Pfeiffer, Judge and Harold L. Lowenstein, Senior Judge

Miguel Vaca appeals the judgment of the motion court denying his Rule 29.15 motion for postconviction relief following an evidentiary hearing. Vaca sought to vacate his convictions for two counts of first degree robbery, section 569.020, RSMo 2000, one count of attempted first degree robbery, section 564.011, RSMo 2000, three counts of armed criminal action, section 571.015, RSMo 2000, and one count of assault in the second degree, section 565.060, RSMo 2000, and total sentence of life plus 102 years. He claims that he was provided ineffective assistance of counsel when counsel (1) failed to call Dr. Bill Geis, a clinical psychologist who had examined Vaca before trial, to testify in the sentencing phase of his trial and for failing to obtain and provide to Dr. Geis additional records concerning his mental state; (2) elicited evidence of an uncharged robbery and assaults at KC Collectibles on October 28, 2002, during the defense case-in-chief; and (3) elicited testimony that he had previously pleaded guilty to the charged crimes.

AFFIRMED

(1a) Where the mitigating value of Dr. Geis's testimony regarding Vaca's mental health was highly speculative and the testimony may actually have had an aggravating effect especially in light of the heinous acts Vaca committed, Vaca failed to prove prejudice from counsel's failure to introduce the testimony and, thus, that counsel was ineffective.

(1b) Where Dr. Geis testified that additional records pertaining to Vaca's mental state did not change his opinions, some of the records may have actually proved harmful to Vaca's case, and the mitigating value of the additional evidence was debatable, Vaca's counsel was not ineffective in failing to obtain and provide to Dr. Geis the additional records.

(2) Where Vaca's counsel embarked upon a specific, considered trial strategy advancing the theory that it was the unidentified person who committed the uncharged robbery and assaults at another store, not Vaca, who committed all of the robberies, Vaca failed to demonstrate that counsel's strategy was unreasonable and, thus, that counsel was ineffective for eliciting evidence of the uncharged crimes.

(3) Where the evidence of Vaca's guilt was overwhelming and the witness remark that Vaca had previously pleaded guilty to the charged crimes was isolated and unprompted, Vaca failed to demonstrate sufficient prejudice to prove ineffective assistance of counsel for eliciting such testimony.

Opinion by: Victor C. Howard, Judge

Date: October 13, 2009

Concurring opinion by Judge James M. Smart, Jr.:

The author agrees with the majority on all points, but writes separately to express the thought that because Missouri does not have formal, sentencing guidelines and because the discretion of the sentencing entity within the lawful range is not regulated, it is extremely difficult to show that different actions would have resulted in a different sentence. Relief will generally be allowed by an appellate court only in the cases of clear prejudice where there is some obviously objective and quantitative result from counsel's ineffectiveness.

Dissenting opinion by Alok Ahuja, Judge:

The author dissents from the majority's denial of Vaca's first Point, which alleges ineffective assistance during the sentencing phase of Vaca's trial due to counsel's failure to call Dr. Bill Geis to testify to Vaca's significant mental health issues. In testimony the motion court credited, trial counsel acknowledged that he had no strategic reason for not putting Dr. Geis on in the sentencing phase, but instead "didn't give that a thought." Counsel was aware of Dr. Geis' opinions because he had, and had reviewed, Dr. Geis' detailed report before trial began.

Contrary to the motion court, equivalent evidence concerning Vaca's severe mental health issues and intellectual deficits was not presented through other witnesses. Further, consistent with Missouri Supreme Court cases addressing the same prejudice issue in bifurcated capital sentencing proceedings, the author concludes that, while by no means a certainty, a "reasonable probability" exists that evidence of Vaca's mental health and cognitive functioning would have resulted in a different outcome at trial. The author would therefore reverse the denial of post-conviction relief to Vaca on his claim of ineffective assistance during the sentencing phase, and remand with directions that Vaca be afforded a new jury sentencing proceeding.

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